

JAMES R. FROCCARO, JR.
Attorney at Law
20 Vanderventer Avenue, Suite 103W
Port Washington, NY 11050
telephone: (516) 944-5062
fax: (516) 944-5066
email: JRFESQ61@aol.com

May 25, 2012

BY ECF

Hon. Robert M. Levy
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Allstate Insurance Co. v. Tanella, et al.
11 Cv 6364 (CBA) (RML)

Dear Magistrate Judge Levy:

As you know, I am the attorney for defendant Inna Lyubronetskaya and Professional Billing Services (collectively, “the defendants”) in the above-referenced matter. I have reviewed the plaintiff’s response to the letter I previously submitted to Your Honor, joining to the extent applicable, in the motion made by codefendant Gregory Spektor to dismiss the Complaint.

Plaintiff argues that (a) “[h]ere, the moving never requested a pre-motion conference to discuss the basis of their anticipated motion to dismiss,” (b) defendants motion to dismiss was “untimely,” and (c) defendants have “waived their right to file a motion to dismiss.” See plaintiff’s letter response dated May 18, 2012. These arguments are

disingenuous. I was personally present for the pre-motion conference held before Your Honor on April 10, 21012, along with two of plaintiff's attorneys, and stated on the record that I would simply be joining in certain aspects of the motion to dismiss made by the co-defendant to avoid unnecessary repetition. And, that is precisely what I did. The issues raised at the conference and in the papers are the same.

Finally, in addressing the merits of the motion to dismiss, namely, the sufficiency of plaintiff's RICO and state law claims, plaintiff has "*to avoid unnecessary repetition*, incorporated all arguments set forth in its opposition to Spektor's motion to dismiss." The arguments previously made by plaintiff in opposition are not meritorious.

Respectfully submitted,

/JRF/

James R. Froccaro, Jr.

JRF:tp